IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1424 OF 2005.

Babulal Radhakisan Ladda & anr. ... Appellants.
Versus.
Datta Mandir Vahiwatdar
(Smt.Pramilabai w/o.Shripad
Vedepujari, deceased by heir heir)
Sou.Shobhana Shankar Deshpande. ... Respondent.

Shri Anilkumar Patil for the Appellant.

Shri Umesh R.Kankapure for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appeal is by the original Defendants. The Courts below have held that the Respondent/ Plaintiff is the exclusive owner of the suit wall described in paragraph 1(b) of the plaint and there is encroachment made upon the said wall by fixing girders etc. as alleged in paragraph 3 of the plaint. After recording the aforesaid finding, the trial Court did not pass a decree for removal of encroachment. However, the trial Court directed the Appellant to pay damages to the Respondent-Plintiff. The present Appellant did not challenge the decree passed by the trial Court. The decree was challenged only by the Respondent/ Plaintiff. while confirming the aforesaid finding recorded by the trial Court, the Appellate Court modified the decree by directing removal of encroachment.

2. After hearing heard the Advocates appearing for the parties. I find that the findings recorded by the Courts below are based on appreciation of oral and documentary evidence on record. In fact the earlier suit between the parties, it was established that the Respondent is the owner of the wall in question.

3. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.